

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
HONORABLE WILLIAM A. MCKINNON
2021-CP-11-0430

RECEIVED
OCT 28 2022
S.C. SUPREME COURT

RONNIE BONNER, #213069

APPELLANT,

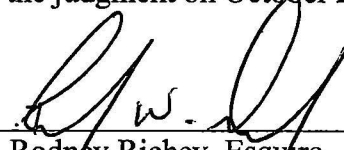
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Ronnie Bonner appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on June 6, 2022 an Order issued on October 10, 2022 and filed on October 20, 2022. The Appellant received notice of the judgment on October 25, 2022.


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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
)
)
Ronnie Bonner, #213069,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS OCT 28 2022
FOR THE SEVENTH JUDICIAL CIRCUIT
S.C. SUPREME COURT

Case No.: 2021-CP-11-0430

ORDER OF DISMISSAL

FILED IN THE OFFICE
CLERK OF COURT
2022 OCT 20 A 11:41
BRANDY W. HIGBEE
CHEROKEE COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed July 12, 2021. Respondent made its return on October 14, 2021, requesting an evidentiary hearing, which was held on June 6, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Christopher Thompson also testified. After reviewing all records and evidence before this Court, this Court finds Applicant has not shown that he is entitled to post-conviction relief. This Court therefore denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its May 2018 term, the Cherokee County Grand Jury indicted Applicant for trafficking methamphetamine, between twenty-eight and one hundred grams (2018-GS-11-00653). Applicant was represented by Christopher Thompson, Esquire. Deputy Assistant Solicitor Kim Leskanic and Assistant Solicitor Matt Kendall of the Seventh Circuit Solicitor's Office prosecuted the case. On April 16-

18, 2019, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury and was found guilty as indicted. Judge Cole sentenced Applicant to life imprisonment. A motion to reconsider the sentence was filed April 26, 2019. A hearing on the motion to reconsider was held on June 3, 2019, and an order denying the motion was filed June 5, 2019.

Applicant filed a timely notice of appeal on June 18, 2019, that was perfected by Taylor D. Gilliam, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Bonner*, 2021-UP-155, (S.C. Ct. App. filed May 5, 2021). The remittitur was issued on May 26, 2021.

Summary of Relevant Facts

Applicant was in the back seat of a car with two co-defendants, Angela Upchurch and Brian Parker, when the car was stopped and searched by officers, after Parker provided consent to search the car. (R. 52-56). In the car, 47.45 grams of methamphetamine were found in two baggies. (R. 57, 197). None of the individuals claimed the drugs. (R. 64).

Both co-defendants cooperated with the State and testified at trial. Upchurch denied ownership of the drugs. (R. 105). Parker stated he was unaware of where the drugs were found and that he never saw them in the car but remembered Applicant attempting to hand something up to him when they were being pulled over. (R. 141-42). Applicant testified on his own behalf at trial and claimed the drugs belonged to Upchurch, that she had placed them in the back seat and that, although he does use methamphetamine, he does not sell it. (R. 238, 247).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully

because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel.
 - a. Failure to strike juror #18, Susan Cash for being a former employee of Cherokee County Sheriff's Department.
 - b. Failure to move for a mistrial or move to stroke Angela Upchurch's testimony.
 - c. Failure to move to strike Sharon Stone's testimony where she had no first-hand knowledge of the incident in question and her testimony only improperly bolstered the State's case.
2. Denial of due process.
3. Denial of fair and impartial jury.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to strike a juror that was a former employee of the Cherokee County Sheriff's Office.
 - b. Failure to object to the State opening the door to allow prior convictions in at trial.
 - c. Failure to convey consequences of a notice to seek life without parole.
 - d. Failure to prepare Applicant for his testimony at trial.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant's Testimony

Applicant stated that one of the jurors seated in his trial should have been struck because they were a former employee at the Cherokee County Sheriff's Office. Applicant stated that he thought she was partial because she stated she knew some of the officers. Applicant stated that he told Counsel to strike her. Applicant stated that he did not talk to Counsel about testifying. He stated that he was unwilling to take the fifteen-year plea offer. Applicant stated he did not talk to Counsel about the risk of pleading versus going to trial. Applicant stated that he was given a notice of intent to seek life without parole. Applicant stated that after he turned down the fifteen-year offer he thought he would be sentenced to thirty years' imprisonment. Applicant stated that

Counsel told him he had a good chance of winning at trial. Applicant stated that one of the other individuals in the car consented to the vehicle search. Applicant stated that Counsel should have had two of the witnesses at trial separated at the jail.

On cross-examination, Applicant stated that he was informed that if he went to trial, he would be sentenced to life without parole. Applicant stated that the drugs were found underneath the driver's seat. Applicant stated that the other riders in the car stated that the drugs were his. Applicant stated that another witness stated she saw something like a drug deal occur in a bathroom in her home earlier that day. Applicant testified that he turned down the fifteen-year plea offer because he thought he had a good chance at trial. Applicant stated that he paid twenty dollars for the methamphetamine he smoked that day. Applicant stated he had a prior record and smokes meth. Applicant stated that more drugs were on the female passenger's person.

Counsel's Testimony

Counsel testified that he was not concerned about the juror in question. Counsel testified that he did not think he needed to object to the prosecutor opening the door to admitting Applicant's prior convictions in. Counsel stated that Applicant was adamant that he did not sell meth. Counsel testified that the State had a strong case against him. Counsel testified that he thought Applicant was given a good plea offer. Counsel testified that he thought Applicant was not aware of the seriousness of the potential for a sentence of life without parole.

On cross-examination, Counsel was unsure if striking the juror would have made a difference. Counsel testified that he told Applicant to be short and concise concerning his testimony. Counsel testified that Applicant was adamant about being a drug user rather than a dealer and that he was not guilty. Counsel also stated that the other two riders in the car were placed in the same police car and that he thought there was a question on whether they agreed to

turn on Applicant. Counsel testified that Applicant voluntarily admitted on the stand that he was a drug user.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the

evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCPP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Strike Juror

Applicant claims Counsel was ineffective for failure to strike a juror that was a former employee of the Cherokee County Sheriff's Office. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). Further, "[i]n PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." *Id.*

Counsel credibly testified that he was not concerned about the juror in question because she was only *formerly* employed of the Cherokee County Sheriff's Office. He also credibly testified that he was not sure whether striking that juror would have made a difference in the outcome at trial. Further, Applicant has not presented any credible evidence that the refusal to strike the juror would have made a difference at trial. Accordingly, relief is denied on this ground.

Failure to Object to Prior Drug Convictions

Applicant claims Counsel was ineffective for failure to object to the State eliciting testimony about Applicant's prior drug convictions. Whether failure to object constitutes deficient performance generally hinges on whether a reasonable trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid

reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

On direct examination at trial, Applicant admitted to using meth the day he was arrested. (Tr. 230-31). On cross-examination, Applicant testified that he smoked that night and that he paid for the drugs he had smoked, but denied selling any drugs. (Tr. 245-47). The State then asked Applicant if he is “just a meth user.” In response, Applicant volunteered “[y]es ma’am, I will not sell drugs.” (Tr. 247). When asked if he would not sell meth, Applicant stated that he does “not sell meth, period.” (Tr. 247). After this admission, the State requested to open the door to asking about Applicant’s prior objections.

This Court finds that Counsel was not deficient on this ground because, as Counsel credibly testified at the PCR hearing, Applicant volunteered the fact that he was a drug user and volunteered the testimony that he did not deal drugs. The statement that he did not deal was not offered in response to a direct question. Applicant opened the door himself to the line of questioning in question. After the door was opened by Applicant, Counsel did not have a basis for an objection. Counsel cannot be held responsible for Applicant’s own choices made without consulting Counsel. Therefore, and because the line of questioning was not objectionable once Applicant opened the door, any objection would have been overruled. Hence, there cannot have been any prejudice for failure to object. Thus, relief is denied on this ground.

LWOP Notice

Applicant claims Counsel was ineffective for failure to adequately convey to Applicant the importance and consequences of the notice of intent to seek life without parole. However, Applicant testified that Counsel told him that if he was found guilty at trial, he would receive a life sentence without possibility of parole. Additionally, before the trial, the trial judge engaged

Applicant in a colloquy, where he was informed and confirmed his understanding that if he proceeded to trial and was found guilty, he would face life in prison without possibility of parole. (Tr. 7-12). Accordingly, this Court finds Applicant's allegation is without merit and refuted by both his own testimony and the trial transcript. Accordingly, relief is denied on this ground.

--- Inadequate Preparation of Applicant's Testimony

Applicant claims Counsel was ineffective for failure to properly prepare Applicant for testifying at his trial. Counsel testified that he told Applicant to be short and concise concerning his testimony. There has been no showing as to why this was unreasonable and, accordingly, deficient. There has also been no showing on what additional preparation would have consisted of or how that would have made a difference in the outcome of the trial. Therefore, Applicant has not established prejudice. Accordingly, relief is denied on this ground.

Conclusion

For the foregoing reasons, this Court finds and concludes that Applicant has not established any constitutional violation or deprivation that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203; SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10th day of October, 2022.

William A. McKinnon 2761
WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spokane, South Carolina.